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File No. 512

Collection No.

1939

JLJP 23.1.47

Mas 23/1

Resident's Office
Bangalore

Pros. Serial Nos. 1-5

Subject.

Application of Portions of The Sea Custom's Act 1878, with Suitable modifications to the City Station, Bangalore.

Previous References.

Later References.

(Blue).

NOTES AND PRECIS.

The Political Department have approved of the scheme regarding the introduction in the Station of the provisions of the Customs Act. They have, however, made certain alterations, some of which are very small and one of importance. (underlined in red. There is)

2 Section 188 has been introduced by them with modifications. While examining the various provisions that should be introduced in the Station, section 188 also had been considered but dropped with a purpose. Various powers have been entrusted to the subordinate Customs officials in British India, and section 188 provides for an appeal to the highest authority, and ultimately section 191 provides for revision by the Central Government. It appears to be thoroughly inappropriate to copy the British Indian section and provide for a statutory appeal to the head of the Administration from the orders of the Judiciary, and thus super-impose an executive tribunal over the judicial appellate tribunals provided by the Code of Criminal Procedure. Any decision or order of a Magistrate is a judicial pronouncement, and (judicial pronouncements) can be reversed or modified only by a superior judicial tribunal; that is a cardinal principle of jurisprudence, and giving authority to an executive officer to sit in judgment over the verdict of a Court is opposed to that principle

3 For an offence punishable under section 167 of the Act in force in the Station a person can only be prosecuted before a Magistrate, for the powers of adjudication of confiscations and penalties by Customs officials which are contained in section 182 are not available in the Station, the section not having been extended.

4 There is judicial authority for the proposition that the finality enacted in the last sentence of

section 188 is restricted to the redress available before the executive authorities themselves. In a case reported in 1928 A.I.R.(Madras) at page 608, it has been held that where executive authorities in the exercise or under colour of statutory powers, interfere with the person or property of the subject improperly or in excess of the limits authorised by the law, the subject has the right to resort to the Civil Court unless its jurisdiction has been taken away by express words or by clear implication. Please see the ruling which is a case under the Sea Customs Act.

5 It is for consideration whether the Political Department may be told that the Resident has no objection to the new section 188 introduced by them, but wishes to point out the anomaly of providing for a statutory appeal to an executive authority from the orders of the Judiciary. For orders.

P.S.Rao
2.2.40

Secretary. 6 we must distinguish between ades passed by a magistrate in an executive capacity (confiscation under 167) and ades passed in magisterial capacity (conviction & fine under 167). The remedy appears to be either to add the words "in an executive capacity" to Sec 188, or to give executive powers to Comm. of Police, if there is any confusion. But surely in spite of the section now worded, no appeal from a conviction could ever be held to lie to the Resident in an executive capacity. Please speak.

H Fulton.

Para 6.

1 It appears to be doubtful whether the portion of the Magistrate's order relating to confiscation could be construed as an executive act and the portion relating to ~~penalt~~ penalty as a judicial act. In section 167, as it stands in British India, Customs officials have the power to order confiscation and impose penalties, and Magistrates have the power to impose fines - please see items 23, 26, 72, 74, 75, 76 and 78. which relate to conviction by a Magistrate and fine. Then again please see para 2 of section 197. When the matter passes from the hands of an officer of Customs to those of a Magistrate, the penalty is converted into a fine, or rather a Magistrate can enforce payment only by way of recovery of a fine inflicted by himself.

2 There is no doubt, however, that the mere use of the expressions "offence" and "penalty" in respect of the acts and omissions specified in section 167 is not by itself sufficient to show that such acts or omissions are declared as crimes. In a case reported in A.I.R.1926 Sind at page 40, it has been stated that there are certain Statutes which do not create an imperative and positive duty, but which only impose as the result of non-compliance with the directions of the Statute, a pecuniary loss on the individual who does not so comply. It is perfectly competent, therefore, for an officer of Customs to inflict such a pecuniary loss. But when it is inflicted by a Magistrate, it appears it would be a conviction pure and simple and a judicial order. As stated in para 2 of notes, sections 188 and 191 provide for appeals against orders passed by subordinate officials of Customs.

It appears section 188, as applied, may well be deleted, leaving to aggrieved persons the usual relief of appeals against magisterial orders. ~~Draft~~ The issue of an order, however, under section 19 need not await the decision on this point. Draft submitted.

Secretary. ASRao 23.2.40

10

Under the British Indian Act provision is made for

(a) executive confiscation and imposition of penalty by Customs officials.

(b) conviction by a court for importation of smuggled goods and imposition of ~~a~~ fine and confiscation of goods.

Here we have no customs staff and in any case are far away from the initial act of smuggling. We do not therefore propose to give to the Police any executive powers of penalty or ~~conviction~~ confiscation. We will take action only through prosecution of offenders. Sec. 188 as drafted by the Political Dept. is therefore, apart from its invalidity, unnecessary, since there will be no executive orders against which an appeal will be necessary; but Section 167 as we have drafted it does not perhaps make it quite clear that the penalties envisaged by this Section are only ~~liable~~ leviable on conviction of the offender. I suggest therefore that we should write to the Political Dept. pointing out the difference between the Act as applied to the C & M Station and the British Indian Act and suggesting a slight redraft of Sec. 167 and ~~the~~ omission of Sec. 188.

26/7

26/7/40

JC

11

Page 421 — Vol. VIII — Compiled Central Acts.

Please see sections 33 and 34 of the Dangerous Drugs Act, 1930, under which goods are liable to confiscation, and Courts may order confiscation. The following draft of section 167 is submitted for consideration:

"Whoever imports or attempts to import into the Civil and Military Station of Bangalore any goods, the importation of which is prohibited or restricted under section 19, contrary to such prohibition or restriction shall be punished with fine which may extend to one thousand rupees or to three times the value of the goods, and the goods shall be liable to confiscation".

~~Draft to Political Department~~ ~~is submitted~~

12 I am afraid we did not think this matter out very clearly

(1). If we do not propose any executive levy of penalty or executive confiscation, then not only Sec. 188 but also 183, 184 & 186 should be omitted. We do not want a magistrate to have the power in 183, which is not appropriate to our Section 167. 184 is unnecessary when there is a conviction and 186 similarly is unnecessary, as it refers to executive confiscation etc.

(2). Do we ~~Government~~ not want to give any power of executive confiscation or penalty?

(a). Smuggled goods. We have no Customs staff & it is too far away from the place of entry

(b) Documents prohibited entry into India alternative. Mention is made in Sec 181 A re seditious documents - Anyway the only power of executive confiscation of documents are those possessed by Customs Officers on in 182. & we don't want to give executive power of confiscation where we and authorities in Bn. India

13 Hême I think we should redraft 167 as now proposed & omit, 183, 184, 186 & 188.

H Duncan

13/3/40.

15/3

11. The fact that sections 183, 184 and 186 were out of place in the revised enactment, as applied, had been overlooked, please. It appears, however, that only section 186 has no place really. Section 183 contemplates an option, and while section 167 lays down that goods "shall be liable to confiscation", section 183 only permits the payment by the owner of the goods in lieu of confiscation such fine as the Officer (Magistrate) thinks fit. After-all it is more expedient to recover (in addition to fine) the value of the goods ~~instead of~~ than to issue a formal order of confiscation and subsequently effect a sale of the goods which vested in His Majesty. Section 184 may remain, as it reads as follows as modified by modification (6): "When anything is confiscated by the Magistrate, such thing shall thereupon vest in His Majesty". Only sections 186 and 188 may, therefore, be omitted. For orders.

AsRao
15.3.40
15

Secretary. I still think we can safely omit all four. The Magistrate can give him back the goods & make him pay a larger fine if he wants

Draft for approval

H Duncan
18/3/40.

Resident

(with draft amended as suggested according to the draft).

1. Revised draft notification in accordance with draft letter is submitted.

DSRa
26.3.40

Thanks. a shower
PS 27/3/40

Resident.

AH 27/3.

S. N: 3: Issue

A
~~29.4.40~~
18.5.40

Dy.No. 4654 S.N. 4

This Residency was again right when it ~~was~~ stated that section 188 introduced by the Political Department (when it had not been included in the draft forwarded by us) was incorrect and not valid. They have now accepted this view and omitted that section. Please see paras 2, 6, 7, 9, 10 and 11 of these notes.

The notification may as usual be published in the Residency Orders. Draft submitted.

DPS

DSRa
8.5.40

Secretary. Issue.
AH 9/5.

S. N. 5: Issue.

Record.

DR

CORRESPONDENCE.

R.Dis.No. F.576-39 Judl.

From

The Hon'ble Lt. Col. J.H.Gordon, C.I.E., O.B.E., M.C.,
Resident in Mysore.

Issued 24/10/39 DSh

To

The Secretary to His Excellency
the Crown Representative, New Delhi.

Dated Bangalore, the 24th October 1939.

Application of portions of the Sea Customs Act, 1878, with suitable modifications to the Civil and Military Station of Bangalore.

Sir,

I request that certain portions of the Sea Customs Act, 1878, with suitable modifications may be applied to the Civil and Military Station of Bangalore, for two reasons:

(a) foreign propagandist literature has found its way into Bangalore as into the rest of India. The most objectionable of that literature is now prohibited entry into British India by orders of the Central Government, and I consider that the Resident should have the power to declare that all literature banned entry into British India is banned entry into the Station, and to order the seizure of such literature and punishment by fine of persons in possession of it. Such literature may be objectionable without coming under the definitions in section 4(1) of the Indian Press (Emergency Powers) Act, 1931, and hence action under section 20 of that Act, as applied to the Station, is not feasible;

(b) there have been numerous complaints by the Collector of Customs, Madras, that Bangalore is used as a distributing centre for silks smuggled in from the French Settlements. The application of certain sections of the Act will facilitate local police action in case of necessity against smugglers bringing silks into the Station.

I enclose a draft notification for the consideration of His Excellency the Crown Representative.

I have the honour to be,

Sir,

Your most obedient servant,

Lieut. Colonel,

R E S I D E N T.

BJ

No.
POLITICAL DEPARTMENT.
Dated New Delhi, the October 1939.

NOTIFICATION.

- - -

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Civil and Military Station of Bangalore (Application of Laws) Orders 1937, namely:-

In the schedule to the said Order, under the heading "Acts of the Central Legislature" after entry "25. The Indian Treasure Trove Act, 1878 (VI of 1878)" the following entry shall be inserted, namely:-

"25-A. The Sea Customs Act, 1878 (VIII of 1878).	Only sections 19, 167, 168, 171 to 176, 178 to 181C, 183, 184 and 187 shall be applicable subject to the following modifications:-

(1) For section 19 substitute -

"19. The Resident may by general order prohibit or restrict the brining into the Civil & Military Station of Bangalore of goods in respect of which the Central Government has issued a notification under Section 19 of the Sea Customs Act, 1878, for the time being in force in British India or of goods in respect of which the customs-duty leviable upon them under the said Act has not been paid on their entry into British India.

(2) For section 167 substitute -

"167. If any goods, the importation of which is prohibited or restricted under section 19, be imported into the Civil & Military Station of Bangalore, contrary to such prohibition or restriction, or if any attempt be made so to import any such goods, they shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees".

(3) References to the Customs Collector and the Chief Customs Officer shall

shall be deemed to be references to the District Magistrate; references to other officers of Customs shall be deemed to be references to Police Officers not below the rank of Sub-Inspectors; and references to the Customs house shall be deemed to be references to a Police Station, Civil and Military Station, Bangalore.

(4) Omit the second paragraph of section 180.

(5) For the purpose of section 181B, the High Court of Judicature at Madras shall be the High Court.

(6) In section 187 omit "other than those cognizable under section 182 by officers of Customs".

SECRETARY TO HIS EXCELLENCY THE CROWN REPRESENTATIVE.

BJ

No. 11 -I.B.
POLITICAL DEPARTMENT.
Dated New Delhi, the 16th January 1940.

N O T I F I C A T I O N.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Civil and Military Station of Bangalore (Application of Laws) Order, 1937, namely:-

In the Schedule to the said Order, under the heading "Acts of the Central Legislature", after the entry "25. The Indian Treasure Trove Act, 1878 (VI of 1878)", the following entry shall be inserted, namely:-

"25-A. The Sea Customs Act, 1878 (VIII of 1878).	Only sections 19, 167, 168, 171 to 176, 178 to 181 C, 183, 184, 186, 187 and 188 shall be applicable subject to the following modifications :-

(1) For section 19, substitute -

"19. The Resident may by general order prohibit or restrict the bringing into the Civil and Military Station of Bangalore of goods in respect of which the Central Government has issued a notification under this section as in force in British India or of goods in respect of which the customs-duty leviable upon them under the Act has not been paid on their entry into British India.

(2) For section 167, substitute -

"167. If any goods, the importation of which is prohibited or restricted under section 19, be imported into the Civil and Military Station of Bangalore, contrary to such prohibition or restriction, or if any such attempt be made so to import any such goods, they shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees".

(3) References to the Customs Collector and the Chief Customs Officer

shall

shall be deemed to be references to the District Magistrate; references to officers of Customs shall be deemed to be references to Police Officers not below the rank of Sub-Inspectors; and references to the Customs house shall be deemed to be references to a Police Station, Civil and Military Station, Bangalore.

(4) Omit the second paragraph of section 180.

(5) For the purpose of section 181B, the High Court of Judicature at Madras shall be the High Court.

(6) In section 184, for the words and figures "under section 182" the words "by the Magistrate" shall be substituted.

(7) In section 187 omit "other than those cognizable under section 182 by officers of Customs".

(8) For section 188, substitute -

"Any person deeming himself aggrieved by any decision or order passed by a Magistrate under this Act may within three months from the date of such decision or order appeal therefrom to the Resident. Every order passed in appeal under this section shall be final".

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
23 JAN. 1940
Diary No. 919
File No.....

Sd. C. Latimer,

SECRETARY TO HIS EXCELLENCY THE CROWN REPRESENTATIVE.

Copy forwarded for information to the Hon'ble the Resident in Mysore with reference to his letter R. Dis. No. F.576-39, Judl., dated 24th October 1939.

By order, etc.,

for Secretary to His Excellency the Crown Representative.

No.R.F.576-39/Judl.

From 29/3/40

The Resident.

To

The Secy. to H.E.
the Crown Representative,
New Delhi.

Application of portions of the Sea Customs Act, 1878, with suitable modifications to the C & M Station of Bangalore.

Sir,

I have the honour to refer to your endorsement forwarding notification of the Political Dept. No. 11-I.B., dated the 16th January 1940.

2. On further consideration I ~~have~~ proposed a somewhat amended draft of the notification applying the Sea Customs Act as in the enclosed form. The Sea Customs Act as in force in British India confers executive powers on the subordinate customs officials to confiscate goods and impose penalty. Section 188 provides for appeals to the highest Customs authority, and Section 191 for revision by the Central Govt. in respect of such executive orders. There is no customs staff in the C & M Station, Bangalore, and it is not proposed to give to the Police or the Magistrates any executive powers of confiscation or penalty. Action against

offenders will be taken only through prosecution. It appears therefore that Sections 183, 184, 186 and 188 should be omitted. The appeal contemplated in Section 188 will not be necessary since no executive orders will be passed under the Act by a Magistrate who will enquire into ~~the~~ offences under Sec. 167 of the Act by virtue of powers vested in him under the Cr.P.C. Appeals against sentences passed by him on conviction of offenders will be heard by the usual judicial tribunals. In order to make the position quite clear I also suggest a redraft of Section 167.

I have etc.,

/9

R e s i d e n t.

POLITICAL DEPARTMENT.

No..... Date.....

Notification.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendments shall be made in the Civil and Military Station of Bangalore (Application of Laws) Order, 1937, namely :-

In the Schedule to the said Order, under the heading "Acts of the Central Legislature", for the entry "25-A. The Sea Customs Act, 1878 (VIII of 1878)" the following entry shall be substituted, namely :-

"25-A. The Sea Customs Act, 1878 (VIII of 1878).	Only sections 19, 167, 168, 171 to 176, 178 to 181 C, and 187 shall be applicable subject to the following modifications :-

(1) For section 19, substitute -

"19. The Resident may by general order prohibit or restrict the bringing into the Civil and Military Station of Bangalore of goods in respect of which the Central Government has issued a notification under this section as in force in British India or of goods in respect of which the customs-duty leviable upon them under the Act has not been paid on their entry into British India."

(2) For section 167, substitute

"167. Whoever imports or attempts to import into the Civil and Military Station of Bangalore any goods, the importation of

98 27/3

which is prohibited or restricted under section 19, contrary to such prohibition or restriction, shall be punished with fine which may extend to one thousand rupees or to three times the value of the goods, and the goods shall be liable to confiscation."

(3) References to the Customs Collector and the Chief Customs Officer shall be deemed to be references to the District Magistrate; references to officers of Customs shall be deemed to be references to Police Officers not below the rank of Sub-Inspectors; and references to the Customs house shall be deemed to be references to a Police Station, Civil and Military Station, Bangalore.

(4) Omit the second paragraph of section 180.

(5) For the purpose of section 181B, the High Court of Judicature at Madras shall be ~~xxxxxx~~ the High Court.

(6) In section 187 omit "other than those cognizable under section 182 by officers of Customs".

ASRa.
26.3.40

No. /12 -I.B.

Political Department.

Dated Simla, the 2nd May 1940.

NOTIFICATION.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Civil and Military Station of Bangalore (Application of Laws) Order, 1937, namely:-

In the Schedule to the said Order, under the heading "Acts of the Central Legislature", for the entry "25-A. The Sea Customs Act, 1878 (VIII of 1878)", the following entry shall be substituted, namely:-

"25-A. The Sea Customs Act, 1878 (VIII of 1878).	Only sections 19, 167, 168, 171 to 176, 178 to 181 C, and 187 shall be applicable subject to the following modifications:-

(1) References to the Customs Collector and the Chief Customs Officer shall be deemed to be references to the District Magistrate; references to officers of Customs shall be deemed to be references to Police Officers not below the rank of Sub-Inspectors; and references to the Customs house shall be deemed to be references to a Police Station, Civil and Military Station, Bangalore.

(2) For section 19, substitute -

"19. The Resident may by general order prohibit or restrict the bringing into the Civil and Military Station of Bangalore of goods in respect of which the Central Government has issued a notification under this section as in force in British India or of goods in respect of which the customs-duty leviable upon them under the Act has not been paid on their entry into British India."

(3) For section 167, substitute -

"167. Whoever imports or attempts to import into the Civil and Military Station of Bangalore any goods, the importation of which is prohibited

or restricted under section 19, contrary to such prohibition or restriction, shall be punished with fine which may extend to one thousand rupees or to three times the value of the goods, and the goods shall be liable to confiscation."

(4) Omit the second paragraph of section 180.

(5) For the purpose of section 181B, the High Court of Judicature at Madras shall be the High Court.

(6) In section 187 omit "other than those cognizable under section 182 by officers of Customs"."

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
7 MAY 1940
Diary No. 4654
File No.

Sd/- C. G. Herbert,

Secretary to His Excellency the Crown Representative.

Copy forwarded to the Hon'ble the Resident in Mysore, for information with reference to his letter No.R.F.576-39/Judl., dated the 29th March 1940.

By order, etc.,

for Secretary to ~~His~~ Excellency the Crown Representative.

Issued 17/5

THE HON'BLE THE RESIDENT IN MYSORE.

NOTIFICATION.

No. 58, dated Bangalore, the 10th May 1940.

The following notification of the Political Department is republished.

O/C

Secretary to the Resident.

No. 112-I.B.

POLITICAL DEPARTMENT.

NOTIFICATION.

Simla, the 2nd May 1940.

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the Civil and Military Station of Bangalore (Application of Laws) Order, 1937, namely:—

In the Schedule to the said Order, under the heading "*Acts of the Central Legislature*", for the entry "25-A. The Sea Customs Act, 1878 (VIII of 1878)", the following entry shall be substituted, namely:—

"25-A. The Sea Customs Act, 1878 (VIII of 1878).	Only sections 19, 167, 168, 171 to 176, 178 to 181 C, and 187 shall be applicable subject to the following modifications:—

(1) References to the Customs Collector and the Chief Customs Officer shall be deemed to be references to the District Magistrate, references to officers of Customs shall be deemed to be references to Police Officers not below the rank of Sub-Inspectors; and references to the Customs House shall be deemed to be references to a Police Station, Civil and Military Station, Bangalore.

(2) For section 19, substitute—

"19. The Resident may by general order prohibit or restrict the bringing into the Civil and Military Station of Bangalore, of goods in respect of which the Central Government has issued a notification under this section as in force in British India or of goods in respect of which the customs-duty leviable upon them under the Act has not been paid on their entry into British India."

(3) For section 167, substitute—

"167. Whoever imports or attempts to import into the Civil and Military Station of Bangalore, any goods, the importation of which is prohibited or restricted under section 19, contrary to such prohibition or restriction, shall be punished with fine which may extend to one thousand rupees or to three times the value of the goods, and the goods shall be liable to confiscation."

(4) Omit the second paragraph of section 180.

(5) For the purpose of section 181B, the High Court of Judicature at Madras shall be the High Court.

(6) In section 187 omit 'other than those cognizable under section 182 by officers of Customs'."

C. G. HERBERT,

Secretary to His Excellency the Crown Representative.

To the Manager, Residency Press, Bangalore, for publication in the Residency Orders. - 25 copies to be supplied.

The District Magistrate, Civil & Military Station, Bangalore. (with 20 S.C.)